

## Sixth Amendment Testimonial Evidence

### **Davis v. Washington**

United States Supreme Court, June 19, 2006

*Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.*

In *Davis*, a victim's 911 call revealed an on-going domestic disturbance, her abuser's name, birth date, the context of the assault, and that he had fled the house. When the police arrived, the victim was "shaken" and injured. The defendant was later arrested for violating a restraining order. The victim did not testify at his trial, and the 911 call was admitted into evidence.

In *Hammon v. Indiana*, a companion case, the police responded to a domestic disturbance where they found the defendant's frightened wife on the front porch. She gave them permission to enter the house where they saw evidence of a violent struggle. The wife told the police of the fight, and filled out and signed a "battery affidavit" describing how her husband assaulted her and destroyed various items in the house. The defendant was charged with domestic battery. The wife was subpoenaed, but did not appear at trial, and her affidavit was admitted as her "present sense impression" and her statements as "excited utterances."

Applying *Crawford v. Washington*, the Court held that the 911 call in *Davis* was an interrogation, but not in the *Crawford*-sense of the term, *i.e.*, it did not produce "testimonial" statements. To explain what is "testimonial," the Court employed a temporal inquiry. *Crawford* interrogation is solely directed at establishing the facts of a *past* crime in order to identify (and convict) a perpetrator. However, a 911 call is not designed to "primarily" establish *past* facts, but rather to describe current circumstances requiring police

assistance. What the victim recited in her 911 call was necessary to resolve the present emergency.

Determining the testimonial character of the statements in *Hammon*, the Court found to be an "easier" task. There, the Court found it to be entirely clear from the circumstances that there was no emergency, and the interrogation was part of an investigation into *past* criminal conduct. The sole purpose of the interrogation was to investigate a crime.

Specific to the issue that domestic violence cases are notoriously susceptible to witness intimidation, the Court refused to yield on the confrontation guarantee. But it noted that the Sixth Amendment does not require courts to acquiesce when a defendant procures or coerces silence from a victim. Rather, it reiterated that the forfeiture by wrong-doing doctrine will cause such a defendant to forfeit his constitutional right to confrontation.